

## **REMARKS**

### **I. Explanation of amendments**

Claims 49, 51, and 54 have been amended to insert the term "isolated" as suggested by the Examiner. Claims 49 and 51 have also been amended to remove language to more clearly define the claimed subject matter.

### **II. The rejection of claims 49, 51, 54, and 78-80 under 35 U.S.C. §101, should be withdrawn.**

The Examiner rejected claims 49, 51, 54, and 78-80 for allegedly failing to distinguish the claimed polypeptides from naturally existing products. In response, Applicants have amended claims 49, 51, and 54 to insert the phrase "isolated" as suggested by the Examiner at page 4 of the Office action. Support for this amendment can be found, for example, at Examples 1-5 of the specification as filed which describe the isolation of nucleic acids and purification of polypeptides of the present invention. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 49, 51, 54, and 78-80 under 35 U.S.C. §101.

### **III. The rejection of claims 49 and 51 under 35 U.S.C. §112, second paragraph, should be withdrawn.**

Claims 49 and 51 were rejected under 35 U.S.C. 112, second paragraph, for allegedly failing to point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner alleged that the recitation of the phrase "or a fragment thereof" in claims 49 and 51 is unclear in terms of the scope of said fragment.

Notwithstanding Applicants disagreement with Examiners position, Applicants have amended claims 49 and 51 to remove the recitation of language related to fragments. These amendments are made solely to expedite allowance of the instant application and in way should be construed as an admission of the Examiner's statements made in the Office action. Applicants reserve the right to pursue the deleted subject matter in a continuing application such as a continuation, continuation-in-part, or divisional application.

In view of the amendments and remarks made herein, Applicants respectfully request withdrawal of the rejection of claims 49 and 51 under 35 U.S.C. §112, second paragraph.

**IV. The rejection of claims 49, 51, 54, and 78-80 under 35 U.S.C. §112, first paragraph, should be withdrawn.**

The Examiner rejected claims 49, 51, 54, and 78-80 under 35 U.S.C. 112, first paragraph, for allegedly failing to provide enablement for a fragment of SEQ ID NO: 1 (claim 49), or SEQ ID NO: 3 (claim 51), and a pharmaceutical composition comprising the polypeptide thereof (claims 78-80). The Examiner outlined the factors as set forth in the decisions *in re Wands* 8 USPQ2d 1400, 1400 (Fed. Cir. 1998).

In response, Applicants point out that, as discussed above, claims 49 and 51 have been amended to remove the recitation of language related to fragments. Thus, the instant amendments render moot the Examiner's assertion that pending claims of the instant application fail to provide enablement for a fragment of SEQ ID NO: 1 (claim 49), or SEQ ID NO: 3 (claim 51), and a pharmaceutical composition comprising the polypeptide thereof (claims 78-80). Accordingly, Applicants respectfully request that the rejection of claims 49, 51, 54, and 78-80 under 35 U.S.C. 112, first paragraph, be withdrawn.

**V. The rejection of claims 49 and 51 under 35 U.S.C. §102(b) and §102(e), should be withdrawn.**

The Examiner rejected claims 49 and 51 under 35 U.S.C. §102(b) and §102(e), for allegedly being anticipated by Lentzen, H. et al (U.S. Patent No. 6,271,368) ("the '368 patent") since the '368 patent allegedly teaches a fragment that reads on SEQ ID NO: 3 of the instant application. The Examiner further rejected claims 49 and 51 for allegedly being anticipated by Borgnia, M. J. et al., (J. Biol. Chem. (1996) 271, 3163-3171) since Borgnia et. al., allegedly teaches a chemically modified peptide that meets the limitation set forth in claim 49, items iii) and iv) and the limitation set forth in claim 51.

In response, Applicants point out that, as discussed above, claims 49 and 51 have been amended to remove the recitation of language related to fragments. As such, the instant amendments render moot the Examiner's assertion that pending claims of the instant application fail to provide an explicit definition for the term "fragment." Accordingly,

Applicants respectfully request that the rejection of claims 49 and 51 under 35 U.S.C. §102(b) and §102(e), be withdrawn.

## CONCLUSION

Applicants respectfully requests entry of the foregoing amendment, withdrawal of all objections and rejections, and allowance of all of the pending claims in view of the foregoing remarks. The present amendment includes no new matter.

Respectfully submitted,

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By

A handwritten signature in black ink, appearing to read "Eric M. Brusca", is written over a horizontal line.

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